



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6115-N-02]

Economic Growth, Regulatory Relief, and Consumer Protection Act: Initial Guidance on Property Inspections and Environmental Reviews

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: Section 209 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Economic Growth Act”) added section 38 to the United States Housing Act of 1937 and makes several amendments pertaining to small public housing agencies (PHAs). This notice explains how HUD designates small PHAs and implements section 209 provisions that reduce regulatory burden on small PHAs by reducing the number of inspections required for units with section 8(o) voucher assistance, and providing an exemption from environmental review requirements for development and modernization projects that have a total cost of not more than \$100,000. This notice also identifies the small PHAs that are eligible for this section 209 regulatory relief.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact the following people in HUD’s Office of Public and Indian Housing (none of the phone numbers are toll-free): Harold Katsura, (202) 402-3042, for general questions; and Justin Gray, (202) 402-3721, for questions regarding the environmental review exemption. The address for both individuals is: Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Persons with hearing or speech impairments may access these numbers

through TTY by calling the Federal Relay at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On May 24, 2018, President Trump signed into law the Economic Growth Act (Public Law 115-174, 132 Stat. 1296).¹ The purpose of the Economic Growth Act is to promote economic growth, provide tailored regulatory relief, and enhance consumer protections. Section 209 of the Economic Growth Act added section 38 to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) and made several amendments pertaining to small PHAs, which for the purposes of section 38, are PHAs that administer 550 or fewer combined public housing units and vouchers under section 8(o), and predominantly operate in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A). These provisions streamline certain requirements related to program inspections and evaluations, corrective action requirements, environmental reviews, and energy conservation funding and financing requirements. Certain statutory amendments made by section 209 became effective 60 days after enactment (July 23, 2018). However, while effective, some of the provisions require rulemaking or guidance for implementation.

HUD published a notice in the Federal Register on February 14, 2019, entitled “Section 209 of the Economic Growth, Regulatory Relief, and Consumer Protection Act: Initial Guidance” which, read together with the statutory language, was intended to aid HUD program participants and the public in understanding the reasons for deferred action with respect to specific statutory provisions. See 84 FR 4097. HUD also used the notice as an opportunity to seek public comment on the implementation of the section 209 provisions, including the definition of a small PHA.

¹ The text of the Economic Growth Act, along with a summary prepared by the Congressional Research Service, can be found at <https://www.congress.gov/bill/115th-congress/senate-bill/2155>.

II. Public Comments Regarding the Small PHA Definition

Clarification of “predominantly operates in a rural area.” Commenters responded to several options. A PHA could be deemed to predominantly operate in a rural area if one or more of the following conditions apply: (1) the physical address of the PHA’s main administrative office is in a rural area (a PHA-based definition); (2) more than 50 percent of the buildings occupied by voucher beneficiaries and public housing residents are in rural areas (a building-based definition); or (3) more than 50 percent of the tenants served live in rural areas (a household-based definition). One commenter recommended that the term be interpreted to mean an agency where at least 50 percent of households assisted through public housing and voucher programs live in rural areas. The commenter preferred this household-based definition because a PHA-based definition would conflict with the meaning of “predominantly operates” and a building-based definition would give the same weight to a building regardless of whether it contained one or many voucher holders.

Two commenters stated that HUD should interpret this statement as broadly as possible and utilize all three definitions, so that as many PHAs as possible can take advantage of administrative streamlining. One of these commenters continued by stating that if HUD could not implement this definition, it should adopt a definition using the location of an agency’s address, which would be easy to implement and would not change frequently.

Response. HUD’s interpretation of the statutory language is consistent with the commenters’ desire for an expansive definition that considers both the physical location of the agency’s administrative office (a PHA-based definition) and the location of the tenants it serves (a household-based definition).

Unit Counts. One commenter recommended that HUD should exclude special purpose vouchers in the unit count, as well as units converted to Project-Based Rental Assistance (PBRA) through the Rental Assistance Demonstration (RAD) program.

Response. HUD agrees that units that have converted to section 8 PBRA through the RAD program should not be included because this assistance is not covered by section 8(o) of the United States Housing Act of 1937. However, HUD is including special purpose vouchers in the unit count as they are funded under the tenant-based rental assistance account and are generally governed by section 8(o) requirements.

Periodic reassessment of a PHA's small PHA status. One commenter noted that reassessments need to be balanced, stating that if they are too frequent, they would be disruptive, while failing to make reassessments frequently enough could lead to widely inaccurate designations. The commenter suggested conducting reassessments every five years.

Another commenter suggested that HUD reassess the rural nature of each PHA regularly and reasonably based on how often the national data is updated, and that PHAs should be allowed to reassess the status of their own agencies based on updated data from the Office of Management and Budget, the U.S. Census Bureau, the U.S. Department of Agriculture's Economic Research Service, as well as updated unit data at the individual agency level.

Two commenters further suggested that PHAs which gain "small agency" status should be able to retain that definition indefinitely, so that the number of small agencies would only increase at each reassessment, never decrease. One of these commenters stated that alternatively the designations should be reassessed every ten years. This commenter also proposed sample regulatory language that would base the small PHA designation on all three criteria that were offered as examples in the notice and make the designations permanent.

Response. HUD appreciates the public’s input on this topic. The method for reassessing a PHA’s small PHA status will be determined through rulemaking. The small PHA designations announced in this notice will remain in effect until a reassessment procedure is implemented.

General comment. One commenter stated that HUD should consider consistency among similarly sized nearby agencies rather than strict adherence to meeting the rural requirement when determining small PHA eligibility. Doing so would ensure that similarly sized nearby agencies would receive consistent treatment and significantly expand the streamlining provisions to many more agencies.

Response. HUD understands that the size of a PHA’s operations can be more significant than the rural nature of the PHA’s operations as this relates to the need for burden relief. Congress, however, decided to not extend relief based on program size alone and, instead, produced statutory language requiring a focus on rural areas.

III. Definition of Small Public Housing Agencies

Section 38 defines the term “small public housing agency” as a public housing agency “for which the sum of the number of public housing dwelling units administered by the agency and the number of vouchers under section 8(o) administered by the agency is 550 or fewer” and “that predominantly operates in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations.” After consideration of the public comments discussed above, HUD is interpreting “predominantly operates in a rural area” to mean a small PHA that:

(1) has a primary administrative building with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or

(2) more than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A).

HUD also clarifies that voucher units under section 8(o) include those in the tenant-based Housing Choice Voucher (HCV) program and the Project-Based Voucher (PBV) program.

To avoid confusion with other small PHA definitions that HUD uses, small PHAs for purposes of section 38 will be referred to as “small rural PHAs” in the remainder of this notice.

HUD will post a list of PHAs meeting the small rural PHA definition at:

https://www.hud.gov/program_offices/public_indian_housing/pha/lists. The list is based on data that was available to HUD on January 14, 2020.

Small rural PHAs may receive the inspection and environmental review administrative relief provided by section 38.² As noted in its February 14, 2019 Federal Register notice, HUD will be undertaking rulemaking for the full implementation of section 38. Included in that rulemaking will be the definition of small rural PHA.

IV. Small Rural PHA Designation Methodology

The process for identifying small rural PHAs consists of two main steps: (1) identifying the number of PHAs that meet the size criteria based on the number of public housing units and the number of vouchers they administer; and (2) applying the rural definition to this population. Small rural PHAs are PHAs that administer 550 or fewer combined public housing units and vouchers under section 8(o), and predominantly operate in a rural area. A small rural PHA may be a public housing-only PHA or a voucher-only PHA so long as it does not administer more than a total of 550 units.

² The burden-reducing provisions covering the frequency of inspections for units with voucher housing assistance as described in section 38(c)(2), and the exemption from environmental review requirements as described in section 38(d)(1), are self-implementing in nature. The statutory language covering inspection frequency (i.e., at least once every 3 years for voucher units) does not provide HUD with discretion. Congress explicitly stated the need for rulemaking for section 38(d)(2) which establishes streamlined procedures for environmental reviews of development and modernization projects having a total cost of more than \$100,000. In contrast, Congress did not state there was a need for rulemaking for section 38(d)(1), which provides an exemption from environmental review requirements for development or modernization projects having a total cost of not more than \$100,000. HUD believes this difference in statutory language makes section 38(d)(1) self-implementing.

HUD determined the size of a small rural PHA using the same methodology that it uses to identify unit counts for a “qualified public housing agency” under the Housing and Economic Recovery Act of 2008 (HERA).³ Like a small rural PHA, a qualified PHA under HERA is a PHA that administers 550 or fewer combined public housing units and vouchers under section 8(o). The public housing and voucher unit counts come from HUD’s Inventory Management System/PIH Information Center (IMS/PIC).

The Economic Growth Act directs HUD to use an existing definition for a rural area. This definition is contained in the regulations governing the Consumer Financial Protection Bureau (CFPB) at 12 CFR 1026.35(b)(2)(iv)(A). An area is considered rural during a calendar year if it is:

(1) a county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA-ERS); or

(2) a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States.⁴

³ For the purposes of section 5A(b)(3) of the United States Housing Act of 1937, section 2702 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) defined a “qualified public housing agency” as a public housing agency that meets the following requirements: (1) the sum of the number of public housing dwelling units administered by the agency and the number of vouchers under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) administered by the agency, is 550 or fewer; and (2) the agency is not designated under section 6(j)(2) as a troubled PHA, and does not have a failing score under the section 8 Management Assessment Program (SEMAP) during the prior 12 months. The small PHA definition for section 38 does not use the second part of the qualified PHA definition pertaining to troubled status or having a failing SEMAP score.

⁴ The CFPB regulations contain a third rural criteria that is no longer in effect: “(3) A county or a census block that has been designated as rural by the Bureau pursuant to the application process established under section 89002 of the Helping Expand Lending Practices in Rural Communities Act, Public Law 114-94, title LXXXIX (2015). The provisions of this paragraph (b)(2)(iv)(A)(3) shall cease to have any force or effect on December 4, 2017.”

CFPB provides an updated list of rural counties on its website each year. HUD used this list along with census block data to identify which areas are rural.

To determine which PHAs predominantly operate in rural areas, HUD matched geo-coded office locations, geo-coded public housing unit locations, and geo-coded addresses of voucher units with the rural county and census block data. Based on the definition provided in this notice, a PHA predominantly serves rural areas if:

(1) the physical address of the PHA's primary administrative building is in a rural county or census block; or

(2) the PHA's physical address is in a non-rural county or census block, but more than 50 percent of its public housing units and voucher units are in rural counties or census blocks.

The over 50 percent threshold applies to the combined total of public housing units and voucher units. The list of PHAs meeting the small rural PHA definition is available at:

https://www.hud.gov/program_offices/public_indian_housing/pha/lists. HUD is making the designations based on the most recent data available on January 14, 2020.

V. Appeals

A PHA may appeal its designation or non-designation as a small rural PHA. Only appeals for technical reasons are allowed. A technical reason involves computation mistakes, missing data, or incorrect data. HUD may not consider data that was missing or incorrect due to a PHA's lack of compliance with data submission policies, nor will HUD consider PHA-submitted data that is different from what HUD used to make the designations because the data refers to a different time period. Appeals should be submitted to: U.S. Department of Housing and Urban Development/PIH/REAC, Attn: Technical Assistance Center, 550 12th Street SW Suite 100, Washington, DC 20410.

VI. Inspection Frequency for Section 8(o) Voucher Units.

As of the effective date of this notice, small rural PHAs administering voucher rental assistance under section 8(o) must make periodic physical inspections of dwelling units at least once every three years.⁵ This flexibility is applicable only to periodic unit inspections conducted during the period a participant lives in a unit. A PHA is still required to conduct initial and interim inspections in accordance with 24 CFR 982.405.⁶ For project-based vouchers, 24 CFR 983.103 provisions, as modified by the Housing Opportunity Through Modernization Act of 2016, continue to apply except that the random sample inspection requirement at 24 CFR 983.103(d) applies every three years instead of every two years.

Small rural PHAs cannot begin using a three-year inspection interval until after the next currently scheduled inspection is carried out. For example, if a unit is currently subject to a two-year inspection regime, and one year has passed since its last inspection, its next inspection will still take place next year. After that inspection is completed, the next periodic inspection of the unit may occur up to three years in the future.

HUD or PHAs must continue to conduct lead safety inspections when applicable in accordance with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822). These provisions emphasize following existing requirements and therefore do not require further action for implementation.⁷

VII. Reduction of Administrative Burdens – Environmental Review Exemption

⁵ This supersedes previous guidance provided in PIH Notice 2016-5 that allowed biennial inspections. The Section 8 Management Assessment Program (SEMAP) module will now accept inspection dates up to three years since the last inspection.

⁶ Interim inspections include those required when a participant family or government official reports a condition that is life-threatening (where the PHA must inspect the unit within 24 hours of notification) or not life-threatening (where the PHA must inspect the unit within 15 days of notification).

⁷ Safety inspection requirements under the Lead-Based Paint Poisoning Prevention Act can be found at: <https://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/html/USCODE-2009-title42-chap63-subchapIII-sec4822.htm>.

The Economic Growth Act creates a new section 38(d)(1) which exempts small rural PHAs from any environmental review requirements with respect to development or modernization projects costing no more than \$100,000. As required in section 38(d)(2), HUD will undertake rulemaking to establish streamlined procedures for environmental reviews for projects costing more than \$100,000. This notice implements only the section 38(d)(1) statutory exemption from environmental review. This statutory exemption from environmental review applies to any section 9(d) Capital Fund, section 9(e) Operating Fund or section 8(o)(13) Project Based Voucher (PBV) eligible work activity by a small rural PHA at a project site with a project cost of \$100,000 or less.

Environmental reviews are processed for compliance with the National Environmental Policy Act (NEPA) and related laws and authorities. The level of review varies depending on the scope of work and the conditions of the property. Environmental review requirements for PHAs are explained in PIH Notice 2016-22. Many routine activities carried out by small rural PHAs are already determined not subject to environmental review and did not require environmental review prior to this statutory exemption. The tenant-based HCV program and many routine administrative and operational activities are already categorically excluded not subject to further environmental review.

When PHA activities require environmental review, the reviews are under either 24 CFR Part 58 (“Part 58 Reviews”) or under 24 CFR Part 50 (“Part 50 Reviews”). Part 58 applies when a Responsible Entity (RE) conducts the environmental review, and Part 50 applies when HUD conducts the environmental review. A unit of general local government or state that performs environmental reviews is referred to as the RE and holds jurisdictional authority for the community in which the PHA project site is located. The role of REs and agreements between

PHAs and REs are explained in PIH Notice 2013-07. PHA activities are generally reviewed under Part 58 by an RE. For the section 38(d)(1) exempt activities, eligible PHAs may carry out activities without a request for an environmental review or determination from an RE or HUD.

An environmental review is conducted at a project site level. A project site consists of buildings or other improvements and parcels of land that logically group together as a single and cohesive setting. Since environmental conditions vary from one geographic area to the next, each separate public housing project site is subject to a separate environmental review. An asset management project (AMP) development can include a single environmental review project site or multiple environmental review project sites if the AMP properties do not all logically group together based on proximity. Project aggregation and grouping of scattered sites are explained in PIH Notice 2016-22 as well as 24 CFR 58.32 and 24 CFR 50.21. The project cost threshold of \$100,000 or less for the exemption is measured at the environmental project site level and includes the total cost of the project.

An activity is an action the PHA puts forth as part of an assisted or to be assisted project. The most common activities involve section 9(d) Capital Fund and section 9(e) Operating Fund formula assistance. A small portion of the PHAs identified as eligible in this notice operate only a Section 8(o) voucher program, and a more limited segment of the eligible small and rural PHAs administer a PBV program. For a PHA that only operates a tenant-based HCV program, these activities are already categorically excluded and not subject to further environmental review, and section 38(d) offers no additional regulatory or administrative burden relief. PBV activities are the only section 8(o) activities that require an environmental review. The environmental review of PBV activities is a one-time review required before the PBV housing is approved to be placed under a Housing Assistance Payments Contract (HAP). After the one-

time review for placement of PBV, there is no requirement for continued environmental reviews for ongoing activities at PBV properties. The section 38(d)(1) exempt PBV activities are infrequent and limited to PBV housing placement with a project cost of \$100,000 or less prior to being placed under a HAP contract.

Small rural PHAs eligible for the statutory exemption that also have less than 250 public housing units have full flexibility of use of Capital Funds and Operating Funds as explained in PIH Notice 2016-18. The environmental statutory exemption is not based on the funding source and applies to all eligible Capital Fund, Operating Fund and PBV activities with a total project cost of \$100,000 or less.

The statutory exemption from environmental review applies to any section 9(d) Capital Fund, section 9(e) Operating Fund or section 8(o)(13) PBV eligible work activity by a small rural PHA at a project site with a project cost of \$100,000 or less. The environmental statutory exemption provided by section 38(d)(1) exempts this work activity from NEPA and related laws and authorities. The flood insurance requirements of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001), and the funding prohibitions of the Coastal Barrier Resources Act, as amended (16 U.S.C. 3501), remain applicable. The exemption is available as of the effective date of this notice.

Dated: February 13, 2020.

R. Hunter Kurtz,

Assistant Secretary for

Public and Indian Housing.

Billing code: 4210-67

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